



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
-----------------	-------------	----------------------	---------------------	------------------

10/577,970

05/03/2006

Yukiko Sugihara

06303/HG

7540

1933 7590 11/30/2009

FRISHAUF, HOLTZ, GOODMAN & CHICK, PC
220 Fifth Avenue
16TH Floor
NEW YORK, NY 10001-7708

EXAMINER

LAU, JONATHAN S

ART UNIT

PAPER NUMBER

1623

MAIL DATE

DELIVERY MODE

11/30/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

ADVISORY ACTION

Information Disclosure Statement

The information disclosure statement (IDS) submitted on 9 Apr 2009 has been considered. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement has been considered by the examiner. As indicated in the initialed IDS mailed in the Office Action mailed 14 Aug 2009, the documents GB 02 007 091 and US 4,861,760 are considered. It is unclear if these documents are English-language equivalent applications that are, in fact, a translation of a foreign language application being listed in an information disclosure statement, however these documents are a concise explanation of relevance to information that is not in the English language. Accordingly, the documents JP 60-56684 and JP 6-67853 have been considered as indicated.

Continuation of 11. Applicant's Remarks, filed 05 Nov 2009, have been fully considered and found not to be persuasive.

Amended Claims 1-3 and 5-8 remain rejected under 35 U.S.C. 102(b) as being anticipated by Inohara et al. (WIPO Publication WO 2003/013612, published 20 Feb 2003, provided by Applicant in IDS mailed 03 May 2006). As this document is in Japanese, US Patent Application Publication 2004/0266725 (of record) is provided as an English language equivalent and is referred to as Inohara et al. herein.

Applicant remarks that the dispersion state of the instant invention is accomplished by a concentration of polysaccharide in a range of "0.0001 to 0.01%".

Art Unit: 1623

However, this limitation is not found in the claims, as claim 1 recites "wherein an amount of precipitated polysaccharide in a concentration of from 0.0001 to 0.01% after performing centrifugal separation at 25°C with 40,000 xg for one hour is less than 65% of a total polysaccharide content." The limitation in claim 1 is interpreted as being drawn to the concentration of an amount of precipitated polysaccharide. This interpretation is supported by the language within claim 1, which recites the concentration in proximity to said precipitated polysaccharide followed by other limitations drawn to said precipitated polysaccharide, and the language of dependent claim 5, which recites the composition of any one of claims 1 to 3 "wherein the polysaccharide has a concentration of from 0.0002 to 0.5 wt%." As recited in the rejection as detailed in the Office Action mailed 14 Aug 2009, Inohara et al. discloses a composition containing the 0.1 wt% of the polysaccharide agar in water.

Applicant asserts that it is clear that the particle gels disclosed by Inohara et al. will precipitate upon application of centrifugal force. However, this assertion has not been supported by evidence. As recited in the previous Office Action Inohara et al. discloses giving a liquid composition without gelling (page 4, paragraph 48 and page 7, paragraph 73). Further, Inohara et al. discloses the composition may in some cases be in the state of a particulate gel (page 4, paragraph 39), suggesting that it is required to be in the state of a particulate gel in all cases. Therefore, in absence of evidence indicating otherwise, the invention of Inohara et al. does not necessarily disclose a particle gel that will precipitate upon application of centrifugal force. It is reiterated that Inohara et al. discloses a composition containing the 0.1 wt% of the polysaccharide

Art Unit: 1623

agar in water and the instant invention is interpreted as encompassing the composition wherein the polysaccharide has a concentration of from 0.0002 to 0.5 wt% according to the analysis detailed above.

With regard to the provisional double patenting rejection of amended claims 1-3 over claims 6-11 and 13-16 of copending Application No. 10/486122, copending Application No. 10/486122 is not yet abandoned and this provisional rejection is not the only remaining grounds of rejection, therefore this provisional rejection is maintained. However, the status of copending Application No. 10/486122 will be monitored with regard to this provisional double patenting rejection.

With regard to the provisional double patenting rejection of amended claims 1-3 and 5-8 are provisionally rejected on the ground of nonstatutory double patenting over amended claims 1-3 and 5-13 of copending Application No. 11/810524, it is reiterated that the instant invention is interpreted as encompassing the composition wherein the polysaccharide has a concentration of from 0.0002 to 0.5 wt% according to the analysis detailed above. Therefore according to the interpretation of the invention as claimed and because this provisional rejection is not the only remaining grounds of rejection, therefore this provisional rejection is maintained.

/Shaojia Anna Jiang/

Supervisory Patent Examiner, Art Unit 1623